

REMARKS

Reconsideration of the present application in view of the following remarks is respectfully requested.

I. THE ATTACHED SUPPLEMENTAL DECLARATION UNDER 37 CFR 1.131 ESTABLISHES CLEAR EVIDENCE OF DILIGENCE SUFFICIENT TO OVERCOME THE TILLGREN DOCUMENT.

A. Summary of the previously filed Declarations and the Examiner's objection regarding proof of diligence.

In reply to the previous Office Action dated March 26, 2002, in which the Examiner made several rejections under 35 U.S.C. §§ 102(e) and 103 in light of U.S. Patent No. 6,339,706 ("Tillgren"), applicants submitted a Declaration under 37 CFR 1.131 of Bahram G. Kermani to establish completion of the invention in the above-identified application in the United States at a date prior to November 12, 1999. In addition, applicants submitted a Declaration under 37 CFR 1.131 of Brett T. Freeman, including a dated draft copy of claims transmitted to inventor Kermani on November 10, 1999, to establish diligence from a date prior to November 12, 1999 to reduction to practice. While the Examiner has apparently accepted the Declaration of Bahram G. Kermani to establish conception, the Examiner nevertheless asserted in the Office Action dated October 22, 2002, that the evidence submitted was:

insufficient to establish diligence from a date prior to the date of reduction to practice of the Tillgren reference to either a constructive reduction to practice or an actual reduction to practice. . . .There is no proof of the actual date of the [submitted draft of claims] (such as the date the file was created; or scripted dated notes between the applicant (Mr. Kermani) and the applicant's representative (Mr. Brett Freeman), as listed by applicant in the Declaration, paragraph numbers 7 and 8.

(Examiner's Action dated October 22, 2002, page 2, paragraphs 1 and 2).

B. The attached Supplement to the Declaration under 37 CFR 1.131 of Brett T. Freeman provides clear evidence of diligence.

Although applicants respectfully submit that the signed Declaration and dated draft copy of claims previously filed clearly evidence diligence from a date prior to the date of reduction to practice of the Tillgren reference to either a constructive reduction to practice or an actual reduction to practice, nevertheless, applicants submit herewith a Supplemental Declaration of Brett T. Freeman which provides further evidence of diligence as suggested by the Examiner. Namely, applicants provide in the Supplemental Declaration:

(Exhibit A) a dated copy of the application draft transmittal letter sent to Bahram Kermani on November 10, 1999, the attachment to which included the draft claim set provided in the previous Declaration of Brett T. Freeman (not included again here);

(Exhibit B) The Facsimile Cover Sheet transmitted originally to Bahram Kermani in conjunction with the letter of Exhibit A and the aforementioned draft claim set. The Facsimile Cover Sheet shows the fax machine delivery confirmation date stamp of November 10, 1999;

(Exhibit C) Scripted dated notes of applicant's representatives Brett T. Freeman (BTF) and Joseph F. Posillico (JFP) from a telephone conference of November 11, 1999, between applicant's representatives and inventor Bahram G. Kermani regarding the claimed invention; and

(Exhibit D) A redacted list of certain electronic documents created by Brett T. Freeman for the preparation and prosecution of the application in the above-identified case. The list includes a number of revised specification drafts, including the draft labeled "spec.2" which was created on or prior to, and "Last Modified" on, October 22, 1999, as well as subsequent drafts created and modified up until the transmittal of the final application on January 14, 2000.

Applicants respectfully submit that the evidence supplied with the attached Supplemental Declaration clearly supports the necessary showing of diligence to remove Tillgren as a reference citable against the present application. Accordingly, applicants respectfully submit that Tillgren should be removed as a reference and the Examiner's rejections withdrawn.

II. THE EXAMINER'S PRIMARY REFERENCE IS NOT PROPERLY CITED AGAINST THE CLAIMED INVENTION.

The Examiner rejected claims 1-9, and 11-36 under 35 U.S.C. §102(e) as being anticipated by Tillgren and rejected claim 10 under 35 U.S.C. 103(a) as being unpatentable over Tillgren in light of Puthuff, U.S. Patent No. 6,112,103.

As noted above, applicants submit that Tillgren is not prior art as defined under 35 U.S.C. §102. More specifically, as established in the previously submitted Declaration of Bahram Kermani, prepared pursuant to 37 C.F.R. §1.131, the claimed invention was conceived by Bahram Kermani prior to the November 12, 1999 reference date of Tillgren. In addition, as set forth in the previously filed Declaration of Brett Freeman and the Supplemental Declaration of Brett Freeman attached hereto, due diligence was exercised from a time prior to November 12, 1999 through the constructive reduction to practice, by filing of the above-identified application of the subject-matter now claimed, on January 14, 2000. Tillgren was therefore not "filed in the United States before the invention by the applicant for patent . . ." as required under 35 U.S.C. §102(e) and is thus not properly cited as prior art under such law.

Accordingly, applicants respectfully submit that Tillgren should be removed as a reference and the Examiner's rejection withdrawn.


III. CONCLUSIONS

Reconsideration is respectfully requested. In view of the above remarks, it is urged that the present application be allowed. An early and favorable response is earnestly solicited.

A Petition extending the time to respond to the Examiner's Action for two months is enclosed in duplicate, along with the requisite fee. The Commissioner is hereby authorized to charge any additional fees or credit any overpayment associated with this communication to Deposit Account No. 19-5425.

Respectfully submitted

Dated: March 24, 2003



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